

September 3, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Joel E. Abelove, Esq.
NYS Department of Health
ESP-Corning Tower-Room 2512
Albany, New York 12237

Lynn Braunstein, M.D.
REDACTED

Alexander G. Bateman, Esq.
Ruskin, Moscou, Faltischek, P.C.
East Tower - 15th Floor
1425 RXR Plaza
Uniondale, New York 11556-1425

RE: In the Matter of Lynn Braunstein, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 13-283) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Office of Professional Medical Conduct
Riverview Center
150 Broadway - Suite 355
Albany, New York 12204

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2013) and §230-c subdivisions 1 through 5, (McKinney Supp. 2013), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Chief Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Riverview Center
150 Broadway – Suite 510
Albany, New York 12204

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,

REDACTED
James F. Horan
Chief Administrative Law Judge
Bureau of Adjudication

JFH:cah
Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

-----X
IN THE MATTER : DETERMINATION
OF : AND
LYNN BRAUNSTEIN, M.D. : ORDER
CO-12-08-4264-A :
-----X
BPMC #13-283

A Commissioner's Order and Notice of Referral Proceeding, dated June 20, 2013 and a Statement of Charges, dated June 13, 2013, were served upon the Respondent, Lynn Braunstein, M.D. **THEA GRAVES PELLMAN (Chair), PROSPERE REMY, M.D. and JERRY WAISMAN, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter pursuant to Section 230(10)(e) of the Public Health Law. **LARRY G. STORCH, ESQ., ADMINISTRATIVE LAW JUDGE**, served as the Administrative Officer. The Department of Health appeared by Joel E. Abelow, Esq., Associate Counsel. The Respondent appeared by Ruskin, Moscou Faltischek, P.C., Alexander G. Bateman, Esq., of Counsel. A hearing was held on August 21, 2013. Evidence was received and witnesses sworn and heard and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

STATEMENT OF CASE

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing where a licensee is charged solely with a violation of Education Law §6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York or another jurisdiction, or upon a prior administrative adjudication regarding conduct which would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, Respondent is charged with professional misconduct pursuant to Education Law §6530(9)(a)(ii) [conviction of committing an act constituting a crime under Federal law]. A copy of the Statement of Charges is attached to this Determination and Order in Appendix I.

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers in parentheses refer to transcript page numbers or exhibits. These citations represent evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence.

1. Lynn Braunstein, M.D., (hereinafter "Respondent") was authorized to practice medicine in New York State on December 5, 1986 by the issuance of license number 168847 by the New York State Education Department. (Exhibit #3).

2. On or about January 30, 2013, in United States District Court, Southern District of New York, Respondent was found guilty, based upon a plea of guilty, of Conspiracy to Commit Mail Fraud and Health Care Fraud in violation of 18 U.S.C. § 1349. Respondent was subsequently sentenced to 3 years' probation, 200 hours of community service, \$30,000.00 in forfeiture, and \$100.00 in fees. (Exhibit #4).

CONCLUSIONS OF LAW

The following conclusions were made pursuant to the Findings of Fact listed above. All conclusions resulted from a

unanimous vote of the Hearing Committee unless noted otherwise.

The evidence established that Respondent was convicted of committing a crime under Federal law. Therefore, she is guilty of professional misconduct in violation of Education Law §6530(9)(a)(ii). Therefore, the Hearing Committee voted to sustain the First Specification of professional misconduct set forth in the Statement of Charges.

DETERMINATION AS TO PENALTY

The Hearing Committee, pursuant to the Findings of Fact and Conclusions of Law set forth above, unanimously determined that Respondent's license to practice medicine in New York State should be revoked. This determination was reached upon due consideration of the full spectrum of penalties available pursuant to statute, including revocation, suspension and/or probation, censure and reprimand, and the imposition of monetary penalties.

In considering the appropriate sanction to be imposed, the Hearing Committee considered a number of mitigating and aggravating factors. The Hearing Committee took notice of the fact that Respondent was not a prime instigator of the criminal scheme, and in fact worked in the unlawful clinics for only 21 days over a period of months. Were this the only factor to consider, we might have imposed a lighter sanction.

However, there were a number of very troubling factors which were uncovered during Respondent's testimony. Respondent has previously been disciplined by the Board, entering into a Consent Agreement in 2005 by which she received a censure and reprimand, and a term of probation with practice monitor. This settlement resolved charges of negligence on more than one occasion, involving her treatment of two patients. (Exhibit #5). In addition, Respondent has been involved in at least four malpractice cases over the past several years. Three of these cases involved patient deaths and judgments or settlements in excess of one million dollars. These factors raise serious concerns regarding Respondent's general competence to practice the profession.

Moreover, during her direct testimony, Respondent strongly implied that she was terminated from a hospitalist position at Nassau University Medical Center ("NUMC") because she had made a whistleblower complaint, alleging that her supervisor was encouraging her to perform unnecessary tests. Thereafter, she claimed, she was unable to obtain employment because of poor recommendations from that same supervisor. Her failure to obtain legitimate employment ultimately led her to take the position with the no-fault clinics in order to have a job.

Upon cross-examination, however, it became apparent that Respondent was terminated by NUMC because of poor job performance

and concerns about her mental stability. Respondent entered into a counseling agreement with the Committee on Physician Health ("CPH") at the hospital's insistence. She claimed that she was diagnosed with an adjustment disorder.

Respondent displayed a troubling degree of grandiosity in her thinking. Notwithstanding the multiple malpractice cases, she claimed that she "lived and breathed" medicine and studied constantly. At one point, she informed the Committee that "if you needed a doctor, you would want me".

Respondent also displayed very poor insight. When asked what she would do if allowed to keep her license, she told the Committee that she wanted to own her own business, and planned to establish a "slip and fall" practice whereby she would perform electro-diagnostic studies on accident patients, referred to her from "somewhere", and then send them on for physical therapy. Failing that, she would open a "concierge medicine" practice. She demonstrated no knowledge of what was actually involved in creating a genuine medical practice, and essentially proposed creating the same type of enterprise that led to her criminal conviction.

The Hearing Committee unanimously concluded that allowing Respondent to return to practice would present an unacceptable risk to the people of New York State. Under the totality of the circumstances, revocation is the only appropriate sanction.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED THAT:

1. The First Specification of professional misconduct, as set forth in the Statement of Charges (Exhibit # 1) is SUSTAINED;

2. Respondent's license to practice medicine in New York State be and hereby is REVOKED;

3. This Determination and Order shall be effective upon service. Service shall be either by certified mail upon Respondent at Respondent's last known address and such service shall be effective upon receipt or seven days after mailing by certified mail, whichever is earlier, or by personal service and such service shall be effective upon receipt.

DATED: West Hempstead, New York

August 30, 2013

REDACTED

THEA GRAVES PELLMAN (CHAIR)

PROSPERE REMY, M.D.
JERRY WAISMAN, M.D.

TO: Joel E. Abelove, Esq.
Associate Counsel
New York State Department of Health
Corning Tower - Room 2512
Albany, New York 12237

Lynn Braunstein, M.D.

REDACTED

Alexander G. Bateman, Esq.
Ruskin, Moscou Faltischek, P.C.
East Tower, 15th Floor
1425 RXR Plaza
Uniondale, New York 11556-1425

APPENDIX I

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
LYNN BRAUNSTEIN, M.D.
CO-12-08-4264-A

STATEMENT
OF
CHARGES

LYNN BRAUNSTEIN, M.D., Respondent, was authorized to practice medicine in New York state on December 5, 1986, by the issuance of license number 168847 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about January 30, 2013, in the United States District Court Southern District of New York, Respondent was found guilty, based on a plea of guilty, of Conspiracy to Commit Mail Fraud and Health Care Fraud in violation of 18 U.S.C. §§ 1349, and sentenced to 3 years of probation, 200 hours of community service, \$30,000.00 in forfeiture, and \$100.00 in fees.

SPECIFICATION
FIRST SPECIFICATION

Respondent violated New York Education Law §6530(9)(a)(ii) by being convicted of committing an act constituting a crime under federal law, in that Petitioner charges:

1. The facts in Paragraph A.

DATED: *June 13*, 2013
Albany, New York

REDACTED

MICHAEL A. HISER
Acting Deputy Counsel
Bureau of Professional Medical Conduct